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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re LYNN L., et al., Persons Coming
Under the Juvenile Court Law.

B176581

(Los Angeles County
Super. Ct. No. CK55502)

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

MICHAEL L.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Daniel Zeke Zeidler, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Joseph T. Tavano, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, Larry Cory, Assistant County Counsel, and Sterling Honea, Principal Deputy County Counsel, for Plaintiff and Respondent.

Kimberly A. Knill, under appointment by the Court of Appeal, for Minors.

This is an incarcerated father's appeal from orders denying reunification services for him and refusing to order visitation. We affirm.

FACTS

A.

Lynn L. (then eight years old) and Mark L. (then age four) came to the attention of the Department of Children and Family Services in the spring of 2004, after their mother (Vicki L.) told the police that her husband (Michael L., who is the father of both children) had hit her and threatened to kill her with a hammer. Michael was charged with spousal abuse. The Department initially determined that the children were not at risk because Michael and Vicki were not living together, and because Vicki agreed to a counseling program.

In May, the Department learned that Vicki's 19-year-old daughter from a former marriage (Sheri H.) had alleged that Michael sexually abused her, and that there was an ongoing criminal investigation. Sheri told the police that Michael had raped her and impregnated her, and regularly beat her, and that she had an abortion. Sheri said Vicki (her mother) failed to protect her during the 10 years she lived with Michael and Vicki, and that Michael physically abused both Vicki and Sheri. Vicki told the police she did not know anything about any sexual abuse, and she said Michael did not physically abuse Sheri. When questioned by the investigating police officer, Lynn and Mark talked about their father's physical abuse of their mother and half-sister.

Based on Vicki's refusal to pursue domestic violence charges against Michael, and on the investigation involving Sheri's allegations, Mark and Lynn were taken into protective custody and a petition was filed alleging the children were at risk by reason of Vicki's failure to protect them, and Michael's physical

abuse of Vicki, sexual abuse of Sheri, and alcohol abuse. (Welf. & Inst. Code, § 300, subds. (a), (b), (d), (j).)¹ A detention hearing was held on May 14, at which time the dependency court gave the Department discretion to release the children to Vicki. On May 18, Vicki told the social worker she was willing to cooperate with the police.

B.

On May 19, Michael (who admitted to the police that he first had sexual intercourse with Sheri when she was 15) was arrested and later charged with seven felony counts, including rape, sexual abuse, assault with a deadly weapon, criminal threats, and corporal injury to a spouse.

On May 21, in the dependency case, the court (in Michael's absence) released Lynn and Mark to Vicki, with orders to Vicki to participate in group counseling. On May 25, Michael (who was and remains in custody) appeared in the dependency court, at which time the court authorized monitored visits while he was incarcerated.

Vicki filed for divorce, and she as well as the children told the social worker about Michael's long history of physical abuse (punching, hitting, kicking and similar conduct). Lynn told the social worker she once saw her father and Sheri kissing on the lips, and Sheri told the social worker about the manner in which she had been abused by Michael since she was 11 years old. Michael told the social worker he sometimes got drunk and argumentative, but he claimed he did not remember anything after those incidents, and claimed he

¹ All section references are to the Welfare and Institutions Code.

had never sexually abused Sheri. (He said his admission to the police officer occurred because he was “confused.”)

In a June 10 report, the Department recommended family maintenance services for Vicki and the children, and reunification services for Michael -- but on June 18, the criminal court issued a restraining order, prohibiting Michael from having any personal, telephonic, or written contact with Vicki, Sheri, Lynn or Mark. The order remains in effect.

C.

A contested disposition hearing was held in the dependency court in July. The children’s lawyer recommended against reunification services for Michael (who was present and represented by counsel), and the court pointed out to Michael that this was contrary to the Department’s recommendation. Michael did not request a continuance or otherwise object.² Vicki and Sheri testified and were cross-examined by Michael, but Michael refused to testify, asserting his Fifth Amendment privilege. The reports were all received in evidence.

The court found Vicki “very credible,” and found the children’s statements were entirely consistent. The court sustained all of the allegations, finding that Michael’s abuse of Vicki and Sheri placed Lynn and Mark at risk because it “had so much to do with [Michael’s need for] control and his lack of self-esteem,” and that Lynn and Mark were at risk because Michael’s conduct “had so much to do with violence and control” that it was “sufficient to show risk to the other

² In its respondent’s brief, the Department states that, at the time of the hearing, it was “in the process of changing” its recommendation, and that it fully agrees with the dependency court’s orders.

children, including a male child This is one of the worse cases that we've seen when it comes to domestic violence."

The dependency court noted that the Department had recommended reunification services for Michael, but that both the children's lawyer and Vicki were opposed to that request, then found by clear and convincing evidence "that it would not benefit these children to pursue reunification services with their father. At this point there is a restraining order on the father through the criminal court pending trial. So he's not going to be having any contact with them as it is." The court found that Michael had demonstrated a complete lack of compassion or understanding, that the children were afraid of their father, and that it would not be appropriate to force the children to endure any contact with Michael.

Michael appeals.

DISCUSSION

Michael claims the court should have ordered reunification services for him and allowed the children to visit him. We disagree.

First, we summarily reject Michael's claim of insufficient notice that the court would consider denying reunification services to him. Notwithstanding that the court expressly called the issue to his attention, Michael did not request a continuance or object to a decision on that issue at the time of the hearing. The issue is waived. (*People v. Champion* (1995) 9 Cal.4th 879, 918 [to raise a due process issue on appeal, an objection must be made below]; *In re S.B.* (2004) 32 Cal.4th 1287, 1293, fn. 2.) The same is true with regard to Michael's

claim that the order denying services had to be supported by a social worker's report recommending a denial. In either event, Michael has not suggested that he was prejudiced by either the lack of earlier notice or the absence of a report.

Second, we reject Michael's claim that there was insufficient evidence to support the order denying services. Our review of the evidence supports the dependency court's finding that this is one of the more horrific cases of spousal and child abuse (as well as severe, continuing sexual abuse) in the system, and we see no need to belabor the point. In light of the overwhelming evidence that Michael sexually abused Sheri over a period of almost 10 years (evidence that includes his confession to the police), we agree with the dependency court that this is a paradigm case of battered women's syndrome and child sexual abuse. (§ 361.5, subd. (b)(6) [a finding of severe sexual abuse including sexual intercourse with a sibling is reason enough to deny reunification services]; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820; *In re Sylvia R.* (1997) 55 Cal.App.4th 559, 562.)

Third, we reject Michael's contention that the court should have allowed visitation. The restraining order issued by the criminal court expressly and unequivocally forbids visits of any kind. More to the point, the evidence shows that further contact with the children could jeopardize their physical and emotional well-being, and that the no visitation order is appropriate in this case. (*In re Mark L.* (2001) 94 Cal.App.4th 573, 580.)

DISPOSITION

The orders are affirmed.

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VOGEL, J.

We concur:

SPENCER, P.J.

MALLANO, J.